

the corporation as of the end of its most recently completed fiscal year must be filed. Receivables, other than trade receivables, from affiliates of the general partner should be deducted from shareholders' equity of the general partner. Where an affiliate has committed itself to increase or maintain the general partner's capital, the audited balance sheet of such affiliate must also be presented.

(3) Where a general partner is a partnership, there shall be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(4) Where the general partner is a natural person, there shall be filed, as supplemental information, a balance sheet of such natural person as of a recent date. Such balance sheet need not be audited. The assets and liabilities should be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gains. The net worth of such general partner(s), based on such balance sheet(s), singly or in the aggregate, shall be disclosed in the registration statement.

(g) *Age of Financial Statements.* At the date of filing, financial statements included in filings other than filings on Form 10-KSB must be not less current than financial statements which would be required in Forms 10-KSB and 10-QSB if such reports were required to be filed. If required financial statements are as of a date 135 days or more prior to the date a registration statement becomes effective or proxy material is expected to be mailed, the financial statements shall be updated to include financial statements for an interim period ending within 135 days of the effective or expected mailing date. Interim financial statements should be prepared and presented in accordance with paragraph (b) of this Item:

(1) When the anticipated effective or mailing date falls within 45 days after the end of the fiscal year, the filing may include financial statements only as current as the end of the third fiscal quarter; *Provided, however,* That if the audited financial statements for the recently completed fiscal year are available or become available prior to effec-

tiveness or mailing, they must be included in the filing;

(2) If the effective date or anticipated mailing date falls after 45 days but within 90 days of the end of the small business issuer's fiscal year, the small business issuer is not required to provide the audited financial statements for such year end provided that the following conditions are met:

(i) If the small business issuer is a reporting company, all reports due must have been filed;

(ii) For the most recent fiscal year for which audited financial statements are not yet available, the small business issuer reasonably and in good faith expects to report income from continuing operations before taxes; and

(iii) For at least one of the two fiscal years immediately preceding the most recent fiscal year the small business issuer reported income from continuing operations before taxes.

[57 FR 36449, Aug. 13, 1992, as amended at 58 FR 26514, May 4, 1993; 61 FR 54515, Oct. 18, 1996; 62 FR 6064, Feb. 10, 1997]

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

(a) *Identify directors and executive officers.* (1) List the names and ages of all directors and executive officers and all persons nominated or chosen to become such;

(2) List the positions and offices that each such person held with the small business issuer;

(3) Give the person's term of office as a director and the period during which the person has served;

(4) Briefly describe the person's business experience during the past five years; and

(5) If a director, identify other directorships held in reporting companies naming each company.

(b) *Identify Significant Employees.* Give the information specified in paragraph (a) of this Item for each person who is not an executive officer but who is expected by the small business issuer to make a significant contribution to the business.

(c) *Family relationships.* Describe any family relationships among directors, executive officers, or persons nominated or chosen by the small business

issuer to become directors or executive officers.

(d) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past five years that are material to an evaluation of the ability or integrity of any director, person nominated to become a director, executive officer, promoter or control person of the small business issuer:

(1) Any bankruptcy petition filed by or against any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time;

(2) Any conviction in a criminal proceeding or being subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Being subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities or banking activities; and

(4) Being found by a court of competent jurisdiction (in a civil action), the Commission or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated.

§ 228.402 (Item 402) Executive compensation.

(a) *General*—(1) *All compensation covered.* This item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(2) of this item, and directors covered by paragraph (f) of this item by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specified in this item. Except as provided by paragraph (a)(4) of this item, all such compensation shall be reported pursuant to this item even if also called for by another requirement, including transactions between the registrant and a third party where the

primary purpose of the transaction is to furnish compensation to any such named executive officer or director. No item reported as compensation for one fiscal year need be reported as compensation for a subsequent fiscal year.

(2) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the “named executive officers”):

(i) All individuals serving as the registrant’s chief executive officer or acting in a similar capacity during the last completed fiscal year (“CEO”), regardless of compensation level;

(ii) The registrant’s four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(2)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Instructions to Item 402(a)(2): 1. Determination of Most Highly Compensated Executive Officers. The determination as to which executive officers are most highly compensated shall be made by reference to total annual salary and bonus for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(iii)(A) and (B) of this item), but including the dollar value of salary or bonus amounts forgone pursuant to Instruction 3 to paragraph (b)(2)(iii)(A) and (B) of this item, *provided, however*, that no disclosure need be provided for any executive officer, other than the CEO, whose total annual salary and bonus, as so determined, does not exceed \$100,000.

2. Inclusion of Executive Officer of Subsidiary. It may be appropriate in certain circumstances for a registrant to include an executive officer of a subsidiary in the disclosure required by this item. See Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7].

3. Exclusion of Executive Officer due to Unusual or Overseas Compensation. It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this item an individual, other than its CEO, who is one of the registrant’s most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (a) the distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not